IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 483 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VITTHALBHAI BACHUBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:
MR BS SUPEHIA (appointed) for Petitioner
MR KAMAL MEHTA for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

Date of decision: 06/03/98

ORAL JUDGEMENT (Per S.M.Soni, J.)

The appellant original accused in Sessions Case No.101/90 has filed this appeal against the judgment and order dated 30th April, 1991 passed by the learned Sessions Judge, Sabarkantha at Himatnagar, whereby he has held the appellant guilty of offence punishable under

section 498-A and 302 of Indian Penal Code and sentenced to rigorous imprisonment for 2 years and fine of Rs.100 in default rigorous imprisonment for three months and rigorous imprisonment for life respectively. However, he has ordered the substantive sentences to run concurrently.

Facts leading the prosecution of the appellant ('accused' for short) are as under:

Accused is ordinary resident of Champalpur, Khedbrahma, District Sabarkantha. Accused had married deceased Takhatben about 12 years before the date of incident. By the said marriage, they had two sons and a daughter, elder son being 8 years and youngest daughter being 3 years old. Takhatben belonged to village Kadiadra. Parents of the accused resided at Choriwada village, Taluka Idar. The marital life of the accused and Takhatben was not running smoothly. It appears that they had some disputes. According to the prosecution, the dispute was because of illicit relation of the accused with one Bai Kanta wife of Sardar Ishwar. According to the accused, deceased Takhat was not keeping well and had some ailment of abdomen and was treated by local doctor Manharbhai. In the early morning of 6th September, 1990, at about 3.00 a.m. Takhat had died after having suffered serious pain in her abdomen. The accused therefore, informed the Police in the afternoon of 6.9.90 at about 15.50 hours. On receipt of this information about the accidental death by Khedbrahma Police, police head constable Mansinh Madhusinh, PW 7 had gone to the house of the accused and drew inquest panchnama and sent the dead body for post-mortem examination. The post-mortem examination revealed that the lady has died of asphyxia due to throttling and he therefore registered offence and handed over the further investigation to PSI, Marathe, PW 8. On completion of investigation, PW 8 submitted chargesheet against the accused in the Court of Judicial Magistrate, First Class, Khedbrahma under section 498-A and 302 of Indian Penal Code. The learned Judicial Magistrate, First Class, committed the case to the the Court of Sessions, Sabarkantha at Himatnagar.

Learned Sessions Judge framed charge against the accused under section 302 and 498-A to which the accused pleaded not guilty and claimed to be tried. On completion of the trial after hearing the learned advocates, the learned Sessions Judge held the accused guilty of offence punishable under section 498-A and 302 of the Indian Penal Code and sentenced him as referred to

above. This judgment and order passed by the learned Sessions Judge is assailed in this appeal.

Learned advocate Mr.Supehia for the accused has challenged the judgment on the ground that the prosecution has failed to establish the complete chain of circumstances which would lead to the hypothesis of guilt of the accused. Mr Supehia contended that the prosecution has not examined some of the witnesses who have visited the house of the accused and therefore adverse inference must be drawn. Mr Supehia further contended that the doctor who has performed post-mortem examination has specifically stated that the injuries on the person of the deceased would be self-inflicted and if it be so the cause of death cannot be attributed to the accused alone and the accused is entitled to benefit of doubt when this fact snaps the chain of circumstances. Mr Supehia further contended that the prosecution has failed to establish the motive which will be relevant in the facts of the present case as marital life of the accused with the deceased is of 12 years and there are 3 children out of that wedlock. There could be no earthly reason for the accused to kill his wife. Mr Supehia, therefore, contended that the learned Sessions Judge has erred in holding the accused guilty of the offence charged against him.

Learned APP, Mr Kamal Mehta, supports the judgment. Mr Mehta contends that a complete chain of circumstances is established by the evidence duly proved and there is no snap of any of the links which leads to the hypothesis of guilt of the accused. Mr Mehta further contended that it is the misreading of the evidence of the doctor who has said that injuries on the person of the deceased can be self-inflicted. However, ha has hastened to say on his own that it is not so in the instant case. Mr Mehta further contended that motive is not necessary to be established when the circumstances are sufficient to lead to conclude that the accused has committed the offence. Mr Mehta further contended that even if motive is necessary, then the same is supplied by the prosecution in the instant case. Mr Mehta therefore contended that the appeal be dismissed as the learned Sessions Judge has not committed any error in his conclusions.

There is no dispute of the fact that the deceased was the wife of the accused and had three children of the same marriage. They were living together at Champalpur area of Khedbrahma. On the day of the incident they were living together as husband and wife with two children as

the eldest was living with the father of the accused. Accused has declared at Khedbrahma Police Station at 15.50 hours on 6th September, 1990 that his wife has died of accidental death because of pain in her stomach which started at night. In view of this information, post-mortem was carried and before that inquest panchnama was drawn. Accused has revealed the information of the death of his wife before the Police Station Officer, Khedbrahma and the same was taken down by the Police Station Officer in writing. However, the same is not taken on record being the statement of the accused (we do not enter into the correctness or otherwise as to legality of this statement being not exhibited). As the post-mortem report revealed that the lady has died of asphyxia by throttling, case was registered and necessary statements were recorded in the course of investigation.

From the evidence of PW 3, Shankarbhai, it is revealed that on the day of incident, maternal uncle of the accused had gone to him and informed that Takhat has died. On inquiry from said Chandubhai, he was informed that she has died because of abdominal pain. As he had no money for conveyance, he told him that I will go to my master, borrow money and then will come with you. Thereafter, he, his brother Ramesh, his mother and Sanabhai and Kalubhai, sons of paternal aunt, had gone to Khedbrahma at the house of the accused. There he saw his sister lying on green grass bed. On removing the cover of the dead body, they found nail scratches on her neck portion. The family members of the accused were insisting to take the dead body for cremation. However, as it was a suspicious death, he told that they should inform the police. In the meantime, police had come. Panchnama of the dead body was drawn and the dead body was taken to hospital. PW 3 had then given a complaint to this effect that his sister had died of asphyxia due to throttling. This part of his evidence is supported by the evidence of Rameshbhai, PW 5. Nothing has been shown from the evidence of PW 3 and PW 5 to disbelieve their say that they had gone to the house of the accused on receipt of information from maternal uncle of the accused and when they went to the house they saw dead body of Takhat and it had nail scratches on her neck.

Dead body of Takhat was taken to hospital after they reached the house of the accused after drawing inquest panchnama in the evening of 6th. Said inquest panchnama Ex.19 is duly proved by the evidence of PW 2, Savitaben (Ex.18). Dr. Ravikant Jethwa, PW 1 has performed the post-mortem examination and cause of death

according to him is as under :

"Following are the points to prove the cause of death as being asphyxia due to strangulation.

1. multiple scratch marks in front and sides of neck.

2. Extravasation of blood in the skin in front and side of neck.

3. Dislocation of atlantoxial joint.

4. Cyanosed lips.

5. Frothy blood exuding from nose and mouth.

6. Subconjunctial haemorrhage.

7. Congested larynx and trachea.

8. Heart and aorta full of blood.

He has answered the questions of police vide Ex.10 as under :

"Deceased has injury on her neck which can be the cause of death. It can be caused by pressing hand.

Deceased Bai Takhat appears to have died 24 to 28 hours before the commencement of post-mortem.

In the course of post-mortem examination of Bai Takhat, no fatal ailment is noticed. It is, therefore concluded that she had no such fatal decease."

Doctor, PW 1, has in his cross-examination has stated that outward scratches which he had found on the neck were possible by self infliction. However, he has volunteered that looking to the internal injuries in this case, it is not possible. He has also denied that during the fit of hysteria, a person would inflict scratches on his own neck. He has stated that atlantoxial joint dislocation is possible by throttling. He denies that such dislocation is possible by hanging. He has also denied that there would be sign of finger on the neck in case of throttling. He has stated in the cross-examination that blood infused mucus in frothy

shape would be found in trachea and larynx if higher degree of violence was used for throttling. He has admitted that injuries which he has mentioned are possible even by fall. Dislocation of atlantoxial joint is possible even by fall. In the instant case, it is not the suggestion of defence to any of the witness nor there is any circumstance on record to suggest that the deceased had fallen from any height. If a person falls from any height, injuries referred to by the doctor will not be the only injuries as by fall certain other external injuries on the part of the body which comes first in the impact would be caused. Thus it is clear from the evidence of PW 1 Dr. Ravikant that the deceased has died of asphyxia by throttling. He has also ruled out by his evidence that such throttling can be by pressing oneself, meaning thereby, it could be self-inflicted throttling. Thus from the evidence of PW 1 it is conclusively proved that the deceased has died of asphyxia by throttling.

Mr Supehia has contended before us that if a woman is throttled by her husband, may be at any hour of the day or night, she is bound to resist to save herself and that resistance must cause some injury on her person or on the person of the accused. As any other injury on the person of the deceased as well as accused being absent, it can be inferred that there was no resistance on her part which is not possible to believe and therefore the real cause of death appears to be something else than alleged by the prosecution. It is a physiological phenomena known to everyone that women is considered to belong to weaker section including physical strength. Any resistance by a woman to her husband would normally result in injury/injuries in her failure. Mr Supehia was not able to show us that any resistance by woman should be coupled with or should result in some injury on the person of the woman. It is not necessary that every resistance would cause injury to the person. However, in our opinion, there is one circumstance to suggest that the woman did resist at the time when she was throttled. That circumstance is the scratch on the face of the accused. Accused has come out with the case in his further statement that the said injury was caused of his own when he has gone to the field for work. Here is an accused who comes out with the case initially before the police that his wife has died in the early morning because of some abdominal pain. From the evidence of Doctor, PW 1, it is proved beyond reasonable doubt that her death has nothing to do with the abdominal pain alleged to have been suffered by her. It was the duty of the defence to examine Dr. Manharbhai under

whose treatment the deceased was as per the say of the accused. If the accused has not examined Dr. Manhar as defence witness, it could have been suggested in the cross-examination of Doctor PW 1 who has in reply to the interrogation by the police stated that she has not died of abdominal pain. Thus the fact is conclusively proved that the deceased has died of asphyxia by throttling and that was not a self-inflicted one.

The deceased was the wife of the accused. They were living in the house together. In the early morning of 6.9.90 at about 3.00 a.m.the wife of the accused was found dead. The question is, what is the explanation of the accused for the same ? He has come out with a false explanation. It appears from his complaint to the police Ex.24 that he has tried to misdirect the investigation in the instant case. From the above stated facts only one inference can be drawn that it is the accused who has throttled his wife who has died.

So far as the question of motive is concerned, it is the say of PW 3 that at the relevant time, the accused had admitted before him in the past that he will not continue his relationship with bai Kanta. From the evidence of PW 3, brother of the deceased, and PW 5, cousin brother of the deceased, it is proved that the accused had said that he will not keep any relation with bai Kanta. Even if this part of motive is not proved, it is not necessary that in every case when it is proved otherwise from the evidence on record that it is the accused who has committed the offence, motive is necessary to be proved.

In view of the above discussion when the prosecution has proved the chain of circumstances of fact which leads to hypothesis of guilt of the accused, then it cannot be said that the learned Sessions Judge has committed any error in coming to that conclusion.

The appellant was also charged for an offence under section 498-A of the Indian Penal Code. If one reads section 489A, it refers to cruelty. Relevant for our purpose is clause (a) of explanation of that section which reads as under:

"Explanation: For the purposes of this section, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health

(whether mental or physical) of the woman;"

In the instant case, allegation of the complainant is that the accused had illicit relation with some another woman and there was quarrels between the husband and wife. Accused used to assault her repeatedly and deceased used to go away to her parents house. However, she used to return back. After the last return and before this incident, there is nothing on record to show that how the accused used to have cruelty against the deceased. Thus in absence of any evidence, it cannot be said that the prosecution has proved that there was cruelty on the part of the accused. Thus, in our opinion, the prosecution has failed to prove the charge of section 498A of IPC against the accused.

In the result, the appeal is partly allowed. Conviction of the accused under section 498-A of the Indian Penal Code is quashed and sentence under that section is set aside. Conviction under section 302 of Indian Penal Code is confirmed.

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(vjn)